

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD WILLIAM EARLE,

Petitioner,

No. CIV-02-334 GEB KJM P

vs.

RUNNELS, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's March 22, 2005 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.

1 § 2253(c)(2). The certificate of appealability must "indicate
2 which specific issue or issues satisfy" the requirement. 28
3 U.S.C. § 2253(c)(3).

4 A certificate of appealability should be granted for
5 any issue that petitioner can demonstrate is "'debatable among
6 jurists of reason,'" could be resolved differently by a different
7 court, or is "'adequate to deserve encouragement to proceed
8 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
9 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

10 Petitioner has made a substantial showing of the denial
11 of a constitutional right in the following issue(s) presented in
12 the instant petition: whether the imposition of a sentence of
13 twenty-six years to life for the offense of receiving stolen
14 property violates the constitutional prohibition against cruel
15 and unusual punishment and whether the trial court's failure to
16 conduct an adequate inquiry into potential juror misconduct
17 violated petitioner's right to an impartial jury.

18 Accordingly, IT IS HEREBY ORDERED that a certificate of
19 appealability is issued in the present action.

20 Dated: April 25, 2005

21 /s/ Garland E. Burrell, Jr.
22 GARLAND E. BURRELL, JR.
23 United States District Judge

24 ¹ Except for the requirement that appealable issues be
25 specifically identified, the standard for issuance of a
26 certificate of appealability is the same as the standard that
applied to issuance of a certificate of probable cause.
Jennings, at 1010.

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